

Appellants filed an Appeal Brief on 27 January 2006 explaining clearly and in detail why the final rejection of Claims 1-43 is improper and the Board should reverse this final rejection. As explained in more detail below, the Examiner's final rejection of these claims cannot be properly maintained. Appellants respectfully request the Board to reverse this final rejection and instruct the Examiner to issue a Notice of Allowance with respect to these claims.

Appellants' Claims are Allowable Over the Cited References

Section 9 of the Examiner's Answer consists entirely of material repeated verbatim from the Final Office Action mailed February 12, 2004. Section 10 of the Examiner's Answer consists of four paragraphs. The first, second, and fourth paragraphs consist of new material responding to arguments in Appellants' Appeal Brief, while the third paragraph consists entirely of material repeated verbatim from the Final Office Action mailed February 12, 2004. Below, Appellants specifically address the new material in the first, second, and fourth paragraphs of Section 10 of the Examiner's Answer.

In the first paragraph of Section 10 of the Examiner's Answer, the Examiner asserts that *Cragun* "clearly teaches that the user request to purchase an item is sent to a server in order for the request to be fulfilled" and that, therefore, *Cragun* discloses ***generating at least one availability request corresponding to the rule and concerning the item***, as recited in Appellants' independent claims. Appellants disagree with the Examiner. Contrary to the Examiner's assertion, *Cragun* does not disclose that "the user request to purchase an item is sent to a server in order for the request to be fulfilled." Nowhere does *Cragun* disclose a "user request" or even a "request." *Cragun* discloses only that, when a customer purchases items, information-collection devices collect information on the purchase and communicate the collected information to a computer system that then analyzes the collected information to identify items missing from the purchase that are members of a class of items represented in the purchase. The identified items become the subject of a sales promotion that an output device communicates to the customer. Nowhere does *Cragun* even suggest that the purchase involves a request that is later fulfilled. Instead, the customer's purchase is complete at the time of the transaction.

Moreover, even assuming for the sake of argument that *Cragun* disclosed that "the user request to purchase an item is sent to a server in order for the request to be fulfilled," as the Examiner asserts, such disclosure would still fail to disclose, teach, or suggest ***generating at least one availability request corresponding to the rule and concerning the item***, as recited in Appellants' independent claims. As just an example, such disclosure would still fail to disclose, teach, or even suggest that the user request ***corresponds to any rule***, as recited in Appellants' independent claims.

Also, in the first paragraph of Section 10 of the Examiner's Answer, the Examiner also asserts that *Cragun* "teaches...that an item # corresponds to a stock number, inventory number and Figure 4 illustrates using the item # to recommend an item based on the item #, which corresponds to a stock and inventory number for the item selected by the user," which the Examiner indicates supports the Examiner's assertion that *Cragun* discloses ***generating at least one availability request corresponding to the rule and concerning the item***, as recited in Appellants' independent claims. Appellants disagree with the Examiner. Contrary to the Examiner's assertion, *Cragun* does not disclose "that an item # corresponds to a stock number, inventory number and Figure 4 illustrates using the item # to recommend an item based on the item #, which corresponds to a stock and inventory number for the item selected by the user." Nowhere does *Cragun* disclose a "user." Therefore, *Cragun* also necessarily fails to disclose, teach, or suggest "the item selected by the user." *Cragun* merely discloses that an item number identifies a product and corresponds to a stock number, inventory number, or the like. Moreover, even assuming for the sake of argument that *Cragun* disclosed "that an item # corresponds to a stock number, inventory number and Figure 4 illustrates using the item # to recommend an item based on the item #, which corresponds to a stock and inventory number for the item selected by the user," as the Examiner asserts, such disclosure would still fail to disclose, teach, or suggest ***generating at least one availability request corresponding to the rule and concerning the item***, as recited in Appellants' independent claims. As just an example, such disclosure would still fail to disclose, teach, or suggest that the item number, stock number, or inventory number has any bearing whatsoever on *availability*, as recited in Appellants' independent claims.

In the second paragraph of Section 10 of the Examiner's Answer, the Examiner asserts that, in *Cragun*, "the items are classified and categorized in classes and according to its class, it recommends the additional items" and that, therefore, *Cragun* discloses *identifying at least one rule within the user-requested content and concerning the item, as* disclosed in Appellants' independent claims. Appellants disagree with the Examiner. Even assuming for the sake of argument that the above classification of items could be properly considered *at least one rule*, as recited in appellants' independent claims, *Cragun* would still fail to disclose, teach, or suggest that the classification of items is somehow *within user-requested content*, as recited in appellants' independent claims.

In the fourth paragraph of Section 10 of the Examiner's Answer, the Examiner asserts that the proposed *Cragun-Linden* combination, on which the Examiner relies to reject Claims 2-3, 16-17, and 31-32, is proper. Appellants disagree with the Examiner. The Examiner merely states that "Cragun can be combined to include the server being a web server as taught by Linden because such a modification would provide world access to the system" and that, "[g]iven the web server of Linden, one of ordinary skill in the art would have the knowledge or would know that the server being a web server would allow broader use of the system." Such statements fail to demonstrate that *Cragun*, *Linden*, or knowledge that was generally available to a person having ordinary skill in the art at the time of the invention would have provided any teaching, suggestion, or motivation to even attempt—much less actually—combine the references with each other as proposed. Actual evidence of such a teaching, suggestion, or motivation is clearly required by the M.P.E.P. and governing Federal Circuit case law, as discussed at length in Appellants' Appeal Brief and reiterated here. The Examiner's failure to provide the required evidence is fatal to the Examiner's rejections based on the proposed *Cragun-Linden* combination.

For at least these reasons, Appellants' claims are patentable over the cited references. Appellants submit that the rejection of Appellants' claims is improper and the Board should reverse this rejection.

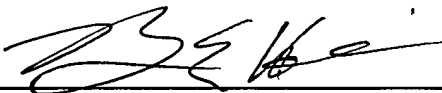
CONCLUSION:

Appellants have demonstrated that the present invention, as claimed, is clearly patentable over the prior art cited by the Examiner. Therefore, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the final rejection of the Examiner and instruct the Examiner to issue a notice of allowance of all claims.

Appellants believe no fees are due. Nonetheless, the Commissioner is hereby authorized to charge any fee and credit any overpayment to **Deposit Account No. 500777**.

Respectfully submitted,

6/12/2006
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No. 020431.0742

In re Application of:

JAMES M. CRAWFORD, ET AL.

Serial No. 09/675,415

Filed: 29 SEPTEMBER 2000

For: **SYSTEM AND METHOD FOR
RENDERING CONTENT ACCORDING
TO AVAILABILITY DATA FOR
ONE OR MORE ITEMS**

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Examiner: **RAQUEL ALVAREZ**

Art Unit: 3622

Confirmation No. 9669

TRANSMITTAL

MAIL STOP: APPEAL BRIEF - PATENT

Commissioner for Patents

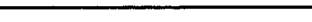
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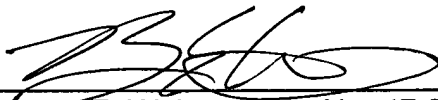
1. This Transmittal with Certificate of Mailing;
2. Reply Brief; and
3. Our return postcard which we would appreciate you date stamping and returning to us.

Certificate of Mailing Under 37 C.F.R. § 1.8(a)	
Date of Deposit:	<u>12 June 2006</u>
I hereby certify that this paper or fee is being deposited with the United States Postal Service as First Class Mail with sufficient postage under 37 C.F.R. §1.8(a) on the date indicated above and is addressed to Mail Stop: Appeal Brief – Patent, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.	
By:	<u></u>

No fee is believed to be due for filing the Reply Brief. Nevertheless, the undersigned hereby authorizes the Director to charge any fees that may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing the Reply Brief to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Respectfully submitted,

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